

STATE OF CONNECTICUT

CONNECTICUT BOARD OF VETERINARY MEDICINE

Melvin Stein, D.V.M.
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Case No. 970327-047-005

MEMORANDUM OF DECISION

Procedural Background

On April 22, 1998, the Department of Public Health ("the Department") presented the Connecticut Board of Veterinary Medicine ("the Board") with a Statement of Charges against Melvin Stein, D.V.M. ("Respondent") dated April 22, 1998. (Dept. Exh. 2.) The Board sent the Statement of Charges, along with a Notice of Hearing, to Respondent by certified mail, return receipt requested, and first class mail on July 31, 1998. The Notice of Hearing notified the parties that the board would hold a hearing on the charges on January 20, 1999. (Dept. Exh. 2.)

Respondent filed an Answer on August 5, 1998. (Dept. Exh. 3.) Respondent filed an additional Answer on January 19, 1999. (Rt. Exh. A.)

On January 27, 1999, the hearing was rescheduled for March 24, 1999.

On March 24, 1999, the Board held an administrative hearing to adjudicate Respondent's case. Respondent appeared and was represented by Attorney Robert L. Hirtle; Attorney Ellen M. Shanley represented the Department.

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 (the Uniform Administrative Procedure Act) and the Regulations of Connecticut State Agencies §§ 19a-9-1, et seq. All Board members involved in this decision received copies of the entire record. All Board members involved in this decision attest that they have either heard the case or read the record in its entirety. This decision is based entirely on the record.

To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn 1985).

Allegations

1. In Paragraph 1 of the Statement of Charges, the Department alleged that Respondent is, and has been at all times referenced therein, the holder of Connecticut veterinarian license number 000700.
2. In Paragraph 2 of the Statement of Charges, the Department alleged that on or about December 2, 1996, Respondent provided care and treatment to Princess ("Princess"), an approximately eleven year old female cat owned by W. Urban.
3. In Paragraph 3 of the Statement of Charges, the Department alleged that, in providing such care and treatment to Princess, Respondent negligently and/or unskillfully:
 - a. failed to take the proper steps to investigate the reason for the cat's respiratory distress; and/or
 - b. failed to completely, properly, and/or accurately create and/or maintain appropriate medical records;
 - c. failed to give the owner the option of referring the cat to another practitioner.
4. In Paragraph 4 of the Statement of Charges, the Department alleged that the above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, § 20-202(2).
5. The Department requested that the Connecticut Board of Veterinary Medicine, as authorized in §§ 19a-17 and 20-202 of the Connecticut General Statutes, revoke or order other disciplinary action against the veterinarian license of Melvin Stein as it deems appropriate and consistent with law.

Findings of Fact

1. Melvin Stein is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut veterinarian license number 000700. (Dept. Exh. 2, 3.)
2. On or about December 3, 1996, Respondent provided care and treatment to Princess an approximately eleven year old cat owned by W. Urban ("Urban"). (Dept. Exh. 3, 6.)

3. Respondent practiced at the South Windsor Veterinary Clinic in South Windsor, Connecticut ("the Clinic") where Ms. Urban took Princess for treatment on December 3, 1996. (Dept. Exh. 3.)
4. On December 3, 1996, Ms. Urban found Princess lying in some type of fluid, on the floor, and immediately brought her to the Clinic. (Tr. 12.)
5. Princess has been Respondent's patient for eleven years. (Tr. 11.)
6. On December 3, 1996, Respondent examined Princess and diagnosed severe dehydration, dyspnea (slow open mouth breathing), cyanosis, and subnormal body temperature. Respondent believed Princess also had heart failure and was terminal. Respondent told Ms. Urban that Princess wasn't "going to make it." (Tr. 13, 54, 59.)
7. Princess was admitted to Respondent's clinic on December 3, 1996, with instructions from Ms. Urban to "do everything" for Princess. (Tr. 13, 14.)
8. Respondent did not give Ms. Urban the option of referring Princess to another practitioner. (Tr. 14, 68.)
9. Respondent administered fluids, oxygen, and three antibiotics (enrofloxacin, penicillin and gentamicin) to Princess on December 3, 1996, and kept her warm. (Dept. Exh. 4; Tr. 29, 54, 64-66.)
10. There were no abnormal lung sounds on either side. The lung sounds were equal and not rales. There was a slow, open mouth breathing but the exhalation did not appear to be labored. The Respondent did not note this in his records. (Tr. 62, 63.)
11. Respondent decided not to take an x-ray because he did not hear anything in the thoracic cavity that sounded like fluid. (Tr. 67, 68.)
12. Respondent measured Princess' respiration rate but has no record of this. (Tr. 63.)
13. On December 3, 1996, Respondent administered oxygen to Princess but there was no improvement. (Tr. 64, 65.)
14. Respondent has no record of the antibiotics administered to Princess. (Tr. 65-66, 69.)
15. Respondent has no record of Princess' body temperature. (Tr. 64.)
16. Respondent has no record of Princess' pulse. (Tr. 65.)
17. Body temperature and pulse rate are helpful diagnostic tools. (Tr. 65.)
18. Princess did not struggle. (Tr. 65.)

19. Princess' daily treatment sheets were discarded after she died. (Tr. 69.)
20. After Princess had been at the clinic for a few hours on December 3, 1996, Respondent attempted to draw blood but obtained less than one ml which was not enough to test. (Dept. Exh. 5; Tr. 67.)
21. Princess died on December 4, 1996. (Dept. Exh. 4.)
22. Jordan R. Dann, D.V.M., who testified for the Department, is an expert of veterinary medicine. (Tr. 27.)
23. Dr. Dann examined Princess' medical records. (Tr. 28.)
24. Respondent should have performed at least one radiograph on Princess. There are many causes of respiratory distress and not all are treated in the same fashion. It is important to be as specific as possible in order to administer the proper treatment. (Tr. 29.)
25. Princess' medical records should include (1) that heat was applied, (2) the drugs used, including the doses and amounts, (3) that oxygen was administered, (4) Princess' response to the treatments, and (5) any procedures the doctor was unable to perform. (Tr. 29-30.)
26. Princess' medical records produced by Respondent omit the information set forth in paragraph 25. (Tr. 30.)
27. Respondent's failure to perform and/or attempt to perform an x-ray was below the standard of acceptable care. (Tr. 30, 37.)
28. X-ray results may have helped guide treatment. (Tr. 35.)
29. Princess' medical records were inadequate and below the standard of care. (Tr. 47.)
30. Respondent failed to take the proper steps to investigate the reason for Princess' respiratory distress. (Tr. 29-30.)
31. Respondent failed to completely, properly, and/or accurately create and/or maintain appropriate medical records. (Tr. 47.)
32. Although Respondent failed to give the owner the option of referring the cat to another practitioner, that fact does not constitute negligence.

Discussion and Conclusions of Law

Section 20-202 of the Connecticut General Statutes provides in pertinent part ". . . [the Connecticut Board of Veterinary Medicine] . . . may take any of the actions set forth in § 19a-17

[with] . . . (2) proof that the holder of such license or certificate has been unfit or incompetent or has been guilty of cruelty, unskillfulness or negligence toward animals and birds. . . "

The Department bears the burden of proof, by a preponderance of the evidence, in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S.Ct. 999, reh'g denied, 451 U.S. 9333 (1981); *Swiller v. Commissioner of Public Health*, CV 950795601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995.

The evidence establishes that on December 3, 1996, Princess was dehydrated, in dyspneic, cyanotic, and had a subnormal body temperature. Respondent believed her to be in heart failure and terminal. (FF. 6.)

After being admitted to the Clinic, Respondent testified taht he administered fluids, oxygen, three antibiotics and kept her warm. (FF. 9.)

However, the only step Respondent took to investigate the reason for Princess' condition, was listening to her lungs with a stethoscope. Although Respondent did attempt to withdraw blood hours later, he could not obtain enough for testing. (FF. 20.) Dr. Jordan R. Dann, the Department's expert opined that, at the very least, Respondent should have performed an x-ray on Princess, unless conditions prevented it. (FF. 23, 24, 25.) Nothing in the record evidences any conditions that prevented taking an x-ray. (FF. 18.) Respondent believed an x-ray was unnecessary because he only heard air in Princess' lungs. However, fluid cannot be heard unless it is in the lungs. Indeed, lungs could sound entirely normal even if they are floating on a sea of fluid.

The Board finds that Respondent acted appropriately when he consulted, drew blood and supported Princess. When Respondent failed to perform an x-ray he acted inappropriately. An x-ray would be contraindicated if Princess were struggling; however, the evidence established that she was not struggling. (FF. 18, Tr. p. 30.)

Accordingly, the Board finds that the Department has met its burden of proof that Respondent, in providing care and treatment to Princess, failed to take the proper steps to investigate the reason for her respiratory distress. (FF. 28, 31.)

The second question presented by the Charges, is whether Respondent failed to completely, properly, and/or accurately, create and/or maintain appropriate medical records.

The evidence establishes that in December 1996 Respondent maintained two types of records for his clients. The first was the permanent record admitted as Dept. Exh. 5. The second was the daily sheets which were discarded after Princess died. (FF. 19.) Respondent has no record of his examination of Princess, her pulse rate, her respiration rate, the medications administered, the treatments administered or body temperature. (FF. 12, 14, 15, 16.) These are all helpful diagnostic tools. (FF. 17.)

The Board notes that nothing in Princess' medical records indicates any sort of dyspnea, which was the primary and salient feature of her condition.

Respondent testified that he considered an x-ray but decided not to perform one, listened to the lungs, and monitored the body temperature. All of this should have been in Princess' records. (FF. 26.)

Therefore, the Board finds that the Department has met its burden of proof, by a preponderance of the evidence, that Respondent failed to completely, properly, and/or accurately create and/or maintain appropriate medical records. Respondent's records were wholly inadequate and below the standard of care. (FF. 30.)

Finally, although the Board finds that Respondent failed to give the owner the option of referring the cat to another practitioner (FF. 8), the Department did not meet its burden of proof that this was negligent or unskillful.

Order

Based upon the record in this case, the above findings of fact and the conclusions of law, and pursuant to the authority vested in it by §§ 19a-17 and 20-202 of the Connecticut General Statutes, the Board orders the following in the case of Melvin Stein, Petition number 970327-047-005, veterinarian license number 000700:

1. The Board hereby reprimands the Respondent.

Connecticut Board of Veterinary Medicine

8/25/99
Date

Louis G. Gona, DVM
by: